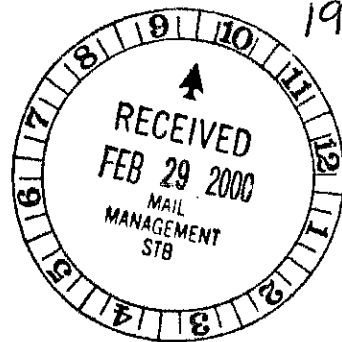


Before the  
Surface Transportation Board  
Washington, D.C



**STB Ex Parte No. 582**

**Public Views on Major Rail Consolidations**

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**COMMENTS OF THE PROFESSIONAL LAND SURVEYORS  
OF COLORADO, Inc.**

The Professional Land Surveyors of Colorado, Inc. ("PLSC") is filing these comments, on behalf of its surveying and mapping professional members, in response to the Decision of the Surface Transportation Board ("STB" or "Board") served on January 24, 2000, in this proceeding. In this Decision, the Board announced its commencement of a review of public views on major rail consolidations and the present and future structure of the North American railroad industry.

PLSC was founded in 1966 and incorporated in 1981 as a non-profit corporation to improve and protect the profession of land surveying in Colorado. Under its articles of incorporation, PLSC's object and purposes includes being able "To compose, recommend and present...to any other legislative, executive or regulatory agency of the government...legislation (or comment) promoting the general good and welfare of the profession of land surveying." Licensed professional land surveyors in Colorado are charged under state law to: "protect the public for any mistakes or negligence in the survey which bears the seal of the registered professional land surveyor." ( 189 Colo. 157, 538 P.2d 444 (1975) ) It is under these obligations to help protect the public's rights and welfare that The Professional Land Surveyors of Colorado, Inc. and its 584+ members come before the STB to comment and voice its discouragement with the evolution of the railroad consolidations in this country and to voice its frustration with the increasingly "aloof" behavior of the railroad industry, as influenced by the major railroads. The Colorado surveying professions' discouragement(s) and frustration(s) with the railroad industry can be focused into five areas:

- (1) The lack of access to accurate, current and reliable mapping of railroad right-of-way and station maps as required under 49CFR1201 as specified to be maintained and accountable to the Surface Transportation Board or its predecessor, the Interstate Commerce Commission;
- (2) The lack of availability of land schedules as stipulated under the old 49CFR1263 (prior to January 1, 1982) and the industry's paranoia about divulging how its rights-of-way are held, the color of title and location of its ownership documents that were to be held in public trust as regulated common carriers responsible for interstate commerce;
- (3) The lack of local access to and the lack of adequate staffing in general of qualified and expert railroad technical personnel at the state and local level to deal with public and private surveyors in the performance of their duties and obligations to the public. In the post-Staggers

era and the rail consolidation era, there is a real concern that regulatory, civic and professional obligations of railroad surveying, mapping and land stewardship are being sacrificed in the name of the financial bottom line;

(4) The lack of proper monumentation and evidence related to rights of way (mapping, land schedules, infrastructure records, etc.) abandoned by the major railroads directly or thru the Class 2 and Class 3 railroads that the Class 1 railroads sold them to. A source of concern here also is the STB's inability to protect adjoining landowners and local surveyors, **the public**, affected by the abandonment of these rights of way; and

(5) The perception by the major consolidated railroads that they are completely exempt from local, county and state regulation by federal rule in matters that include, but are not limited to land subdivision, platting, the practice of land surveying and engineering.

"The land surveyor is charged with the responsibility of locating property lines and showing the relationship of possession and title lines: he does not declare who has ownership of the land or who has the right of possession. Such matters are referred to attorneys and the courts". A surveyor gathers evidence to make an informed decision on the location of boundary and possession lines. A surveyor, by law, is regarded as an expert witness and a measurement scientist in the eyes of the court. Property surveyors' most important functions are (1) to locate previously described parcels of land and (2) to prepare descriptions of newly created parcels. The surveyor's obligation to protect the public and to gather evidence is harmed by the railroad's failure to keep accurate right of way and station maps and also to withhold information that used to be freely exchanged with the surveyor as a professional courtesy. The reluctance of railroad legal departments to allow mapping and land schedule evidence to be shared with boundary surveyors as too much of a risk and a lawsuit waiting to happen is damaging the public's interest, damaging the surveyor's ability to make an informed decision based on the evidence and is casting a shadow on the railroad's ability to comply with 49CFR1201 2-22(a) currently and 49CFR1263 (a) (1&2) as well as 49CFR1263 (c,d,e) as they existed before January 1, 1982. Surveyors are paying railroads \$40 to \$ 50 a map sheet for information that is supposed to be public record and is frequently out of date and also frequently has portions blanked out, usually the land schedule. County courthouses do contain much of this information, but generally are very weak at producing railroad documentation required as evidence by the surveyor. The railroad and the public are frequently harmed by the creation of gaps and overlaps along common boundaries created by railroad's reluctance to be a good corporate and public citizen willing to share map and land title information. In spite of the efforts of the few remaining railroad field engineers and surveyors, the flow of information from the railroads and the surveying community has been severely restricted. Those same few remaining railroad field engineers, surveyors and technicians must be hard pressed to keep up with changes required to keep maps current and to interact with the public.

As the statute that is now 49CFR1201 evolved after January 1, 1982 as to exempt Class 2 and Class 3 railroads from the mapping requirements, no one could foresee the current increase in the number of shortlines created from cast-off rights of ways of the Class 1's. As the remaining Class 1's continue to consolidate, it's logical that additional rights of way will be cast off to shortlines or abandoned. The surveyors of Colorado are very concerned that any such spinoff or abandonment will create another set of lost records and maps that have a direct bearing on future

boundary surveys and protection of the public's interests. Surveyors are being told by at least two new shortlines operating in Colorado that they did not receive records and mapping from the Class 1 railroad that they were spun off from after 1995.

Since January 1, 1982, reference to land schedules showing deed location, custodian's number, color of title, grantor, grantee, date of instrument and serial number for each tract of land has gone away and makes making accurate maps of its property and right-of-way problematic as the intent of the original surveyors and land agent's design is often obscured. With the fact that the bulk of the railroad rights-of-way are controlled by a very limited few, one railroad failing to share mapping and title information with the surveying profession and the public can create an incalculable amount of harm in the determination of land boundaries. We are concerned that the legal department's fear of public record inspection will not allow surveyors over a large part of the country to properly evaluate the evidence of boundary location and ownership along a great many miles of railroad right-of-way and the land of others.

Since the advent of Staggers Act deregulation and the consolidation of the railroads began in earnest in 1983. The numbers of railroaders with technical and mapping backgrounds has dropped precipitously. The act of balancing a railroad's operating budget on the back of the Engineering Department to improve the bottom line has been a reality for many years. The railroad trade press is already wondering\* if (or when) the training of the next generation of railway surveyors, engineers and technicians will ever take place. With these ideas in mind, the surveying profession in Colorado is concerned that pressures to bring more operating monies to the bottom line rather than to a railroad's professional and statute obligations will lead mapping and record keeping efforts into a higher state of decay. The potential of harm to the public and the surveying profession is substantial and need not happen. We ask the STB to investigate why information that is accepted as the definitive public record evidence is so difficult to obtain, is frequently not current as required by statute and is dismissed as not essential to the operation of our nation's large railroads.

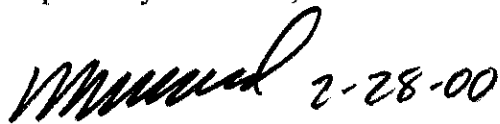
The centerline of railroad track(s) are frequently used as monuments to define railroad rights-of-way and **often are used to describe adjoining properties and boundaries**. Hard to obtain railroad maps and deed descriptions/ schedules further help describe these monuments and boundaries as evidence. The abandonment and removal of track as approved by the STB often causes both the monument (the track) and the supporting boundary evidence (the maps and records) to be lost to future surveyors and landowners. The surveying profession in Colorado requests that the STB consider requiring that the public's interests and that of the surveying community be protected in future abandonment proceedings of Class 1's and in sales to Class 2 and Class 3 railroads. We request that Class 1 railroads, prior to sale to a shortline or abandonment, place their mapping and records in a designated public repository (courthouse, county surveyor?) rather than in the trash as is sadly the case today. The public would be much better served by preservation of the historical record. As the next round of mergers and consolidation seems to be sadly inevitable, can the next wave of abandonments and spinoffs be far behind?

It frequently has come to our attention that some, not all, of the larger railroads operating in the state have "bypassed" state statutes (CRS 30-28-302(1)) regarding the selling off or acquisition of land/ right of way in Colorado in less than 35 acre parcels without a plat of survey in violation of Colorado law. In much the same way that Section 2-22 of 49CFR1201 requires that Class 1 railroads "shall maintain current maps of its property...and shall be prepared in accordance with generally accepted mapping practices", Colorado requires that under Colorado Revised Statute 30-28-301 that a "Subdivision Exemption Plat") be prepared and filed with the County Clerk & Recorder to eliminate boundary questions and legal description conflicts that "jeopardize the ability of property owners to utilize and to convey their property". The surveyor, charged with protecting the public interest, cannot properly evaluate boundary line evidence on these "sold" parcels by the railroad (the property owner) who in turn is responsible for making sure that the exemption plat is executed. The railroad (property owner), by not making a proper plat of survey and not showing the changes in detail on its R/W and Station maps supposedly kept to "generally accepted mapping practices" has damaged "the public's welfare and is interfering with the economic development and utilization of land". As the major railroads of this country continue to consolidate into ultimately 2-4 mega railroads, their intimidating size and clout is beginning to allow them to operate above the letter of the law that is supposed to apply to all landowners in the State of Colorado. We ask the Surface Transportation Board to help surveyors in all states, including Colorado, by reminding the mega railroads that as a publicly regulated utility, each of the railroads are required to be responsible to the public and this includes maintaining and sharing plats, maps, and records with surveyors who are also regulated under the laws of the state.

Also by these comments, The Professional Land Surveyors of Colorado, Inc. would like to see some future dialog with The Surface Transportation Board, the major railroads and the surveyors of the individual states that those railroads serve to solve the many issues raised here. The issues raised are not new and continue to fester in Colorado (and elsewhere in the US). A suitable forum, ample notification and adequate time for the profession to respond to a fair meeting with the STB and the railroads is what PLSC would like to propose. The relatively short notice given by the board and its request for comments posted in its Decision of January 24, 2000 ( in a place that is obscure and unheard of to most surveyors) has prevented a good number of professionals from responding.

In summary, The Professional Land Surveyors of Colorado, Inc, representing the surveying profession in Colorado, is asking the Surface Transportation Board to assist the public by protecting its interests and well-being by reminding the consolidating railroads of their legal and ethical obligations in protecting the interests of the public. This includes compliance with (1) 49CFR1201 in keeping accurate mapping showing their property, (2) sharing land schedule data that helps define that property and is critical evidence, (3) committing to keep adequate staff to serve the public and to share mandated information with the public, including the surveying profession, (4) to better serve the public and especially adjoining land owners and surveyors in abandonment proceedings, and (5) to keep the mega-railroads accountable to the public interest and to be a good corporate citizen, abiding by the laws of the states in which they operate.

Respectfully submitted,



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      Senator Ben Nighthorse Campbell  
      Representative Diana DeGette  
      Representative Joel Hefley  
      Representative Bob Schaffer  
      Representative Mark Udall

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